

REMARKS/ARGUMENTS

Reconsideration and withdrawal of the rejections of the application are respectfully requested in view of the amendments and remarks herewith, which place the application into condition for allowance. The present amendment is being made to facilitate prosecution of the application.

I. STATUS OF THE CLAIMS AND FORMAL MATTERS

Claims 1-23, 25-34, and 36-52 are currently pending. Claims 24 and 35 are hereby canceled. Claims 1, 9, 16, 20, 22, 23, 25, 29, 34, 40, and 46 are independent. Claims 1, 9, 16, 20, 22, 23, 25, 29, 34, 36, 41, and 46 and are hereby amended. No new matter has been introduced. Support for this amendment is provided throughout the Specification as originally filed.

Changes to the claims are not made for the purpose of patentability within the meaning of 35 U.S.C. §101, §102, §103, or §112. Rather, these changes are made simply for clarification and to round out the scope of protection to which Applicants are entitled.

II. TELEPHONE INTERVIEW

Applicants' representative thanks the Examiner for granting the telephone interview on January 6, 2009. Applicants' representative discussed potential subject matter to avoid the cited reference. In particular, Applicants' representative pointed to Publ. App. pars. [0006]-[00080] and [0089]-[0092].

Applicants' representative noted the present application claims a flexible licensing system by reducing stocking costs of seller of value-added articles. In one implementation, the

creator of the added value does not pass the value added costs to the distributor. That is, the distributor can stock more articles because the stocking costs are lowered. The value added creator determines a consideration based upon the type of article sold and the number of such articles sold.

No agreement was reached on particular claim language to overcome the cited reference. However, Applicants representative now points out that the costs of the article art not pushed down the sales chain but, rather up the sales chain by reducing the stocking costs of the article to the manufacturing costs.

III. REJECTIONS UNDER 35 U.S.C. §102

Claims 1-52 were rejected under 35 U.S.C. §102 as allegedly anticipated by U.S. Patent No. 5,884,280 to Yoshioka et al. (hereinafter, merely “Yoshioka”)

Applicants respectfully traverse this rejection

Independent claim 1 is representative and recites, *inter alia*:

“... transmitting article information that includes an article identification and a number of articles sold on the order and value added consideration to the value added provider, ...
wherein the value added creator determines the value added consideration due to the value added provider.”

In an aspect of the present invention, the cost of goods at a wholesaler does not include the consideration due to the value added creator. That is, the cost of stocking the article is reduced to the manufacturing costs

The royalty information is kept by a commerce server and includes an article ID of ordered articles and the amount of a royalty which must be paid to the added value creator.

Upon, for example, sale of an article, the “article information that includes an article identification and a number of articles sold on the order and value added consideration to the value added provider” are transmitted to the value added creator. By transmitting an article ID and the number of articles sold, instead of the royalty information including the amount of the royalty, the royalty may be calculated at the added-value-creator end.

The royalty is generated at an order accepting stage. Thus, while the sales agent company possesses articles as a stock, the value of the stock remains the manufacturing cost without the added royalty cost. Accordingly, the price of each article in stock is lower than otherwise. This reduces the stocking burden to the sales agent company, and large financial merits are obtained. In addition, the number of articles in stock can be increased with lowered financial risk, which reduces the risk that the articles are out of stock and selling opportunities being lost.

The added value creator bears the manufacturing cost and may entrust the sales agent company with the sale of articles. In this case, the articles are a stock of the added value creator, and the sales agent company does not have any stock. That is, the consideration cost is **pushed back up the supply chain** towards the value added creator. This is distinguishable from systems such as Woolston (US Pat. 5,845,265) wherein the consideration costs are **passed down the supply chain through the sales agent and thence to the consumer.**

The present application balances the need of an added-value creator to have a large stock of article at a distributor (pr sales representative) so as not to lose potential sales to out-of-stock-conditions and the distributor’s need to reduce stock due to the cost of the articles in stock and potential for losses of unsold articles.

In general, the largest part of total sales is achieved during the several weeks immediately after the first date of sale after an article, such as recording media (CD-ROMs) containing the computer-executable is released. Thus, when the articles are out of stock during this period, valuable selling opportunities are lost. Accordingly, when a great number of articles are expected to be sold, the added value creator wishes to keep as many articles as possible in stock without losing opportunities to sell the articles.

However, because the wholesaler and the retailer purchase the articles in stock at a price including the consideration to the added value creator, it is not financially advantageous to increase the number of articles in stock because this can cause a rapid increase of assets. In addition, unsold articles result in losses causing additional economic risk of stocking a large number of articles. On the other hand, the added value creator cannot reduce the risk of losing selling opportunities unless the number of articles in stock in the wholesaler and the retailer is increased.

The widespread use of computer networks has encouraged the distribution of software products on-line rather than strictly through the sales and distribution of tangible media-based products, such as CD-ROMs. In this case, when a program is distributed through a network, it is not always known when the consideration accrues corresponding to the added value. This makes cost accounting difficult for this type of distributed product. Publ. App. pars. [0006]-[0008].

Claim 1 is believed patentable over the cited reference because that reference does not disclose each and every element recited in the claim.

For reasons similar or somewhat similar to those described above with regard to independent claim 1, independent claims 9, 16, 20, 22, 23, 25, 29, 34, 40, and 46 are also believed to be patentable.

IV. DEPENDENT CLAIMS

The other claims are dependent from one of the claims discussed above and are therefore believed patentable for at least the same reasons. Because each dependent claim is also deemed to define an additional aspect of the invention, however, the individual reconsideration of the patentability of each on its own merits is respectfully requested.

CONCLUSION

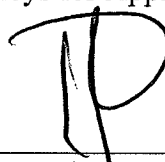
Claims 1-23, 25-34, and 36-52 are in condition for allowance. In the event the Examiner disagrees with any of statements appearing above with respect to the disclosure in the cited reference, or references, it is respectfully requested that the Examiner specifically indicate those portions of the reference, or references, providing the basis for a contrary view.

Please charge any additional fees that may be needed, and credit any overpayment, to our Deposit Account No. 50-0320.

In view of the foregoing amendments and remarks, it is believed that all of the claims in this application are patentable and Applicants respectfully request early passage to issue of the present application.

Respectfully submitted,

FROMMER LAWRENCE & HAUG LLP
Attorneys for Applicants

A handwritten signature in black ink, appearing to be 'P. Levy', written over a horizontal line.

By: _____

Paul A. Levy
Reg. No. 45,748
(212) 588-0800